

# Rechtsgeschichte Legal History

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Zitiervorschlag: Rechtsgeschichte – Legal History Rg 29 (2021)

<http://dx.doi.org/10.12946/rg29/187-196>

Rg **29** 2021 187 – 196

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## Making »*Un Tribunal para la Constitución*«: A Documentary on the Creation and First Years of the Spanish Constitutional Court (1980–1986)

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## Abstract

This article explains how, from 2012 to 2015, the authors conceived, shot and edited the film »Un Tribunal para la Constitución«, a documentary about the first years of the Constitutional Court of Spain. It also tries to show the film's impact among Spanish scholars, journalists and politicians, first as an audiovisual product and later also as a book. Section I explains the context and the reasons that moved the authors to undertake the project. Section II describes how they conceived the documentary, and the process of finding a producer, writing the script, filming and editing it. Section III deals with the dissemination of the documentary, i. e. its exhibition since its premiere in July 2015, and later the process of publishing it as a book in 2017. It will also attempt to outline the feedback the authors received and its impact among scholars, politicians, journalists, etc. Finally, Section IV gives a brief overview of the impact of the documentary and its main contribution to the historiography of the Spanish transition to democracy and contemporary Spanish constitutional law.

Keywords: Constitutional Court of Spain, constitution of Spain, documentary, Spanish transition to democracy (*Transición*), appointment of judges



Miguel Beltrán, Daniel Sarmiento

## Making »Un Tribunal para la Constitución«: A Documentary on the Creation and First Years of the Spanish Constitutional Court (1980–1986)

### I. Introduction: Why a Documentary about the Constitutional Court?

In 2011 the Vice-President of the »first« Constitutional Court of Spain, Mr. Jerónimo Arozamena, died at 87. After reading his obituary,<sup>1</sup> we realized that by then only five of the first twelve judges were alive, and all five were over 80. We then started thinking about how their memories and experiences concerning establishing a new Court might be preserved. We thought that for this purpose the best option would be interviewing them and filming the interviews, and eventually, if the material was interesting or valuable, and if we could find the technical means and – above all – a producer, to put them together in a documentary.

We have just mentioned the »first« Constitutional Court. It is important to make it clear that by »first« we refer to its creation in 1980 and to the appointment of its twelve judges (ten in February 1980 and two in November 1980). It would be the »first« Court, presided over by Judge Manuel García-Pelayo until his resignation in 1986. The period of time in which this »first Court« was in office (and also the previous period 1978–1979 during which the Constitution and the Organic Law of the Court – *Ley Orgánica del Tribunal Constitucio-*

*nal*, hereinafter LOTC – were drafted and passed) would be the subject of our documentary.<sup>2</sup>

As far as we know, there was no direct account of the Court across those years. By »direct« we mean information or articles published by the main actors involved in the creation and initial functioning of the Constitutional Court, such as judges, politicians or journalists, during what we can call the founding period of the Spanish constitutional system (between 1978 and 1982).<sup>3</sup> And by »account« we refer not to scholarly or scientific publications by lawyers, legal scholars, historians or political scientists, but rather to interviews, biographies, etc., in which the relevant aspect is the personal experience or perhaps the socio-political context. What we try to point out is that it was practically impossible to find non-legal accounts, or personal recollections, about the creation of the Court in any format: written, video or audio.

We thought that this was an important lacuna in the constitutional history of Spain, and probably also in the narrative of the Transition to democracy after 1975. Looking back to 2011, when Mr. Arozamena passed away, we realized that within a few years the possibility of collecting and gathering first-hand accounts of that specific period and of events regarding the creation of the Constitutional

1 There were actually two obituaries in *EL PAÍS*: one by Bonifacio de la Cuadra (the legal correspondent, who would later be interviewed in the documentary), on 9 April 2001 (CUADRA 2011); and another one by former Minister of Justice, and later Supreme Court Judge Fernando Ledesma, on 14 April 2011 (LEDESMA 2011).

2 It is commonly understood that the presidency of García-Pelayo was the »first« Court, and probably the same also happens with the second presidency of Francisco Tomás y Valiente (1986–1992) – even though four Judges were replaced in 1989. Since

then, every renewal of the Court (four judges are appointed every three years) has coincided with a new President. But the truth is that the count of the Courts (at the moment of writing this article the eleventh Court is in office) is relatively seldom used, and for instance »the seventh Court« or the »Casas Baamonde Court« – meaning the Court presided by María Emilia Casas Baamonde from 2004 to 2011, being the seventh President since 1980, is not as frequently used as for »the Warren Court« or »the Rehnquist Court« in the United States. So, the only period of the Court which is almost unan-

imously referred to with a number is the García-Pelayo Court (1980–1986), that is, the »first« Court.

3 We have taken 1978 as the initial year of that period, because it was then when the Constitution was drafted and passed, and 1982 as the final year of that period, because then Spain experienced a political watershed, due to the victory of the Socialist party in the general elections held in October 1982. Regarding specifically the Constitutional Court, its »founding« period is the »first« Court (1980–1986).

Court would no longer exist. The protagonists would no longer be living, and oral or first-hand accounts would be lost forever. We thought it was worthwhile exploring the possibility of how we could contribute to filling the lacuna. But we also felt – and perhaps this was even more relevant – that it was important to do it quickly, for obvious reasons regarding the age of the remaining judges and other relevant actors.

Indeed, some materials about this »first« Court did exist, but most of them had been written by scholars. In fact, the approach taken by legal scholars regarding the Constitutional Court focused in general on the comparative aspect (that is: comparing the new Court to other European Courts) or on how the »first« Court dealt with specific issues (constitutional rights, decentralisation, remnants of the Franco dictatorship, etc.). This means that some matters were relatively overlooked, such as: how was the LOTC drafted and passed by the legislature in 1979? What was the appointment process for the first twelve judges? What was the role of political parties in this process? How did the Court work without precedents, case law, or tradition, and without being ingrained in the legal structure? What was the personal vision or perception the judges had concerning their task? When designing the documentary, we thought that these aspects would be better explained if the persons we interviewed were not just the judges, but also »external« actors such as politicians, journalists, legal scholars (both from Spain and from other countries) and other professionals (for instance, prosecutors or attorneys).

So our aim was to combine, on the one hand, a documentary for lawyers or for legal scholars, based on technicalities and on legal or constitutional concepts, with, on the other hand, some elements for a general, non-specialized audience. This does not mean that we were dismissing making a contribution to the legal field: it just means that, as legal scholars, we wanted to combine our own academic understanding, which was obvious-

ly predominant, with a broader view consisting of collecting personal recollections of the judges and other relevant actors, and perhaps eventually a historical assessment of the »first« Court. This conception of the documentary with a »generalist« perspective – some way between journalism, or communication aimed at the public at large, and legal scholarship – would be a constant challenge for us.

When we started to gather journalistic sources, or even academic sources, we noticed that their number was less than we had thought. Historiography about the »first« Court was not abundant, nor was that concerning Title IX of the Constitution (which refers to the Constitutional Court). The LOTC, passed in 1979 by the same legislature that had drafted the Constitution, had indeed been the subject of study by legal scholars, but in a theoretical, strictly scholarly fashion rather than from a broader or non-strictly legal perspective, for instance focusing on the personalities of the judges,<sup>4</sup> the inner functioning of the Court, or how the newly created Court was perceived by Spanish society.

Regarding audiovisual materials, our initial idea was that in the public television archive (the only one that existed when the Court was created) we could find interviews or documentaries. But some signs suggested that these sources might be scarce.<sup>5</sup>

## II. Conceptual Issues: Interviewees, (No) Narrator and Script

By the fall of 2011 we were determined to move forward in the project of filming the documentary. But at that time, it was merely a fanciful idea. First, we had no producer – because we had not started to look for one. And second, and above all, we were not audiovisual professionals (at best, we had some basic, largely theoretical notions of cinema). So the first step was to build the structure of the project, and its budget, and write a memorandum

4 Prof. Enrique Alonso García pointed out in 1989 that, contrary to the US tradition, in Spain the personal or professional aspect of judges is not considered a public or interesting matter, or relevant whatsoever: see »Prólogo« to BELTRÁN DE FELIPE (1989) 6.

5 The most famous series of documentaries about the Spanish Transition, directed by Victoria Prego in the nineties, focused on the period 1975–1977, following the mainstream idea that the Transition started when General Franco died in November 1975 and ended when gener-

al, free elections were held for the first time in June 1977, and therefore did not cover the Constitution, the LOTC or the creation of the Constitutional Court in 1980 (see also PREGO (1996)). In 2011 the website of the Constitutional Court did not contain any audiovisual material.

in order to have something we could show to prospective producers.

We were extremely lucky regarding the producer. In October 2011, we scheduled a meeting with Mr. Alfonso Candau, then-President of the Official Board of Land Registrars (*Colegio de Registradores de la Propiedad y Mercantiles de España*, hereinafter *Colegio*).<sup>6</sup> We gave him a very short memorandum about the project and he was enthusiastic about it. He immediately presented the proposal to produce the documentary to the Council of the Board, which was then accepted. We were at that time, and still are, very grateful to him and to Mr. Celestino Pardo. It was not at all obvious that they – or any other person – would put trust and money in an audiovisual project lead by two law professors with no previous experience in cinema, and which dealt with a topic that could fairly be considered uninteresting (as far as we knew, no one had had this idea before, seemingly because it was not appealing).<sup>7</sup>

By December 2011 we had started to design the documentary. First of all we had to make decisions on several crucial questions. For example: Who should we choose to interview? And how many interviews should we conduct? Should we write down some questions and send them to the prospective interviewees, or should we film the interviews in a more responsive, improvised fashion, without a structured plan? And of course we had to recruit a team of technicians (cameraman, lighting specialist, sound recorder, editor). In sum, we had to establish a complete production plan. We were fully aware that this was a task which normally would be carried out by a film production company, but we could not turn to such a company for

two reasons: first, because the *Colegio* had made it clear that it wanted us to be in charge of the project (it was an assignment based on personal trust), and second, and mostly, because with the budget we had been given we could absolutely not afford to hire a film production company.

The only thing which was clear to us was the object of the documentary (the initial period of the Constitutional Court), its format (interviews with relevant protagonists of this period) and its tenor (the aforementioned tone half-way between a scholarly undertaking and a more generalist film), and that it would be somewhat heterodox, given that we would not have the help of a production company. We were aware that there was a risk of creating some kind of »home movie« that did not meet the ordinary standards of cinema – which would mean a failure.

We began by selecting the persons we wanted to interview. As mentioned above, in early 2012 five of the first twelve judges were still alive, and we managed to contact them relatively quickly. Three agreed to be interviewed (Mr. Aurelio Menéndez, Mr. Luis Díez-Picazo and Mr. Francisco Rubio Llorente).<sup>8</sup> Mr. Rafael Gómez-Ferrer initially agreed but after a few days declined, and Ms. Gloria Begué declined our proposal. We thought, and still think, that being able to count on the collaboration of three out of five was sufficient to create a comprehensive documentary. We also thought we should try to interview relevant politicians from that period. Mr. José Pedro Pérez-Llorca (Minister of the Justice in the centrist government 1979–1980, and a prominent attorney) did not want to be interviewed, but Mr. Juan Antonio Ortega, his undersecretary (*Subsecretario*

6 In Spain the land registrars are public officials that keep the registry of real estate property and in some cases collect the related taxes. They also keep the official registry of corporations and companies.

7 Actually, the role that the *Colegio* played in the long period of filming, editing, and distributing first the documentary and later the book (2012–2017) was exemplary. By this, we mean that when Mr. Candau was replaced by Mr. Aguilera in 2013, after a corporate election, the *Colegio* continued to support the project (even more: it decided to publish it as a book, as will be explained later).

And when Mr. Aguilera was replaced by Mrs. María Emilia Adán in 2017, the *Colegio* did the same; Ms. Adán even presented the book to King Philip: see *Revista Registradores*, no. 82 (2018). In Spain this kind of institutional policy is not so common, for many newly elected officials and politicians neglect or cancel the projects that have been initiated by the former administration.

8 Mr. Menéndez was Minister of Education in the first government of the Transition presided over by Mr. Adolfo Suárez, in 1976, and was a prominent lawyer and commercial law professor. Mr. Díez-Picazo was

also a lawyer and a civil law professor (in the 1960s he had been the main disciple of Mr. Federico de Castro, and probably at the time he was the most prestigious private law scholar in Spain). Mr. Rubio Llorente was a constitutional law professor, and he had a very important role when drafting the constitution, as a high-ranking official of one of the legislative chambers (he was its General Secretary). As the documentary shows, he had also drafted the LOTC and, as a newly appointed judge, he participated decisively in the process of choosing Mr. García-Pelayo as the first President of the Court.

*del Ministerio de Justicia*) did. His collaboration was extremely important, for, as he would explain in the interview, he was the person in charge of negotiating the appointments with the opposition (the Socialist party). In the socialist field we contacted President Felipe González, who gently declined, and Mr. Gregorio Peces-Barba. The latter was a very relevant politician: he was a law professor, he had been one of the seven members of the committee who drafted the initial text of the Constitution (known as the *fathers of the constitution*), and he was Mr. Ortega's counterpart in the negotiations for the first appointments to the Court (he later would be speaker of one of the chambers). We contacted him in the spring of 2012, and he took some time to schedule a meeting (due to illness), so we only spoke on the phone and by email (we discussed the questionnaire and the format of the recording). We scheduled the interview for September, but unfortunately Mr. Peces-Barba died in July.

Apart from the first judges and politicians, we thought that the members of the committee who initially drafted the Constitution (*its fathers*) would give a valuable testimony. Of its seven members,

only three were alive (Mr. Pérez-Llorca, Mr. Roca and Mr. Herrero), and, as mentioned, we could not interview Mr. Peces-Barba. The three were retired from politics and at that time they were prestigious attorneys or high-ranking officials. Mr. Pérez-Llorca did not show interest in being interviewed. Mr. Herrero told us that he thought his remembrances of how the Committee conceived and designed the Constitutional Court were not particularly vivid and therefore he thought his testimony would be uninteresting. Mr. Roca agreed to be interviewed. We already had covered the three main groups (the first judges, politicians and members of the Constitutional Committee), so we went on with other persons whose testimony we considered interesting. First, the law clerks of the Court during the period 1980–1986.<sup>9</sup> We contacted four very relevant clerks, from which three agreed to be interviewed (Mr. Jaime Nicolás, Mr. Alvaro Gil-Robles and Mr. Juan Antonio Xiol).<sup>10</sup> Second, European legal scholars who could speak of how the Court was seen in other countries.<sup>11</sup> Third, Spanish legal scholars.<sup>12</sup> And finally we invited a journalist<sup>13</sup> and a public attorney.<sup>14</sup> So we had 15 persons who we considered

9 The law clerks are mentioned, but not in detail, in the 1979 LOTC. They were, and still are, selected from lawyers (judges, prosecutors, law professors, civil servants), generally in the early stages of their career. They can be recruited for professional, permanent positions in the Court as civil servants, after a tough selection process, or they can be appointed on a temporary basis. The latter is actually how almost all the clerks are recruited. The duration of the appointment and the age of the clerks differ considerably from the US Supreme Court (in Spain the period of service in the 1990s was four years, and the recruitment age was around 35 years old – one of us served as law clerk from 1998 to 2002 and until then those were the approximate figures, but now both the duration and the age at recruitment are probably higher).

10 Mr. Nicolás was very close to President García-Pelayo (he left the Court when Mr. García-Pelayo resigned), Mr. Gil-Robles would later be appointed Defensor del Pueblo (Ombudsman) of Spain and Commis-

sioner for Human Rights of the Council of Europe, and Mr. Xiol was General Secretary of the Court from 1982 to 1986 (he later became Judge of the Supreme Court). This was the position he held when we interviewed him in March 2012, but in June 2013 he was appointed to the Constitutional Court (he appears in the documentary as former law clerk and as Supreme Court judge, despite of the fact that when the documentary was exhibited he was already a Constitutional Court judge). The other relevant law clerk which we invited to participate in the documentary was Mr. Javier Jiménez Campo, a law professor who had joined the Court in 1984. But in 2012 not only was he still in office, but he was the General Secretary of the Court. Therefore he wisely thought he should not participate because his views might be considered »official« views instead of personal recollections. We are very grateful to him for the invaluable help and suggestions for the shooting of the documentary.

11 We invited Prof. Armin von Bogdandy, from Frankfurt, Germany;

Prof. Pierre Bon, from Pau, France; and Prof. Luciano Vandelli, from Bologna, Italy. The three had a deep, first-hand knowledge of the Spanish constitutional justice system (Bon and Vandelli had spent time in Madrid in the 1980s and were friends or acquaintances of some of the judges or law clerks of the Court).

12 Those were Prof. Carmen Chinchilla, from the University of Alcalá in Madrid (she had also served as law clerk at the Constitutional Court, but not during its first period) and Prof. Victor Ferreres, from the University Pompeu Fabra in Barcelona, who probably was at that time and still is the most prominent Spanish expert on constitutional jurisdiction.

13 Mr. Bonifacio de la Cuadra, who from its establishment in 1976 to 2005 had been the legal correspondent of *EL PAÍS*, the main Spanish newspaper, and as such had written many pieces regarding the Court.

14 Mr. Jesús García Torres, who had been the main public attorney to the Court from 1980 to 2013.

fairly representative for making a good documentary about the first years of the Constitutional Court.

We owe a specific mention to Prof. Eduardo García de Enterría. He probably was the most prominent Spanish public law scholar, attorney and judge in the second half of the 20th century. Regarding the Constitutional Court in particular, in 1979 he was commissioned by the government to draft the LOTC, as would be later explained in the documentary by Mr. Rubio Llorente. At that time he had published some articles which were extremely important to disseminate the idea that Constitutional law was »real« law (not a political set of ideas) and that, accordingly, the Constitutional Court was a »real« court that reasoned and functioned as any other court, that is, applying the law and not political ideas.<sup>15</sup> As he was the direct academic mentor of one of us, we thought we had a unique opportunity to get his testimony. Unfortunately, in 2012 he was no longer in good health and declined to be interviewed. Prof. García de Enterría passed away in September 2013, at 90.

During the conception process we took a technical decision regarding how to build the narrative (it was also a conceptual decision). We had to decide whether there would be a narrator or not, that is, if we would use voice over or not. We decided not to. We wanted to be transparent, in the sense of giving all the space to the protagonists. And also if we acted as narrators it would seem that our vision of the period was important, which was not the case (in the years covered by the documentary – for instance in 1980 – we were 5 and 16 years old). Therefore we decided not to appear in the film in image or in voice. This created a huge problem,

or at least this is how we non-audiovisual-professionals perceived it. If we were not to lead the narration, then the script, or the guiding thread would have to be built just on the interviews – on what the interviewees would answer or comment to our questions – so we would not be masters of the whole account. We would need to construct the thread in a somewhat impressionist fashion, using bits of the answers. This was considerably more difficult, but perhaps more faithful to our aim of being transparent and putting the focus on the interviewees. It is not just that we did not want to hog the camera: it is that we thought that it was the technical solution which best fitted in our conception of the documentary.

### III. The Filming and Editing Process (2012–2014)

At the time we contacted these persons, we were also conceiving how we should conduct the interviews. We thought the best idea would be to write down a questionnaire and send it to the person, so he or she could know the object and purpose of the interview (and of the documentary). Indeed, when we made contact we had already explained this. But it was likely that they would feel more at ease and more confident if the interview was previously prepared by means of a written questionnaire that they would receive some days before filming. Such ease and confidence was a key issue for us. We were not journalists who would eventually inquire about potentially tough, controversial matters, or about confidential aspects of the judgments, or about how the Court worked.<sup>16</sup> Our aim was not

15 The articles were compiled in a seminal book: GARCÍA DE ENTERRÍA (1981), titled *La Constitución como norma y el Tribunal Constitucional* (The constitution as a norm and the Constitutional Court). Mr. Bon, in the interview, refers to this book. The importance of Prof. García de Enterría regarding the Constitutional Court is revealed by Mr. Rubio Llorente in the interview: he said that Prof. García de Enterría was offered (apparently by the Government) the position as judge in the first Court, and as he was reluctant, he was told that if he agreed to it he could choose all the other judges (see »Un Tribunal

*para la Constitución*«). Although this probably was exaggerated, it clearly shows his influence and *auctoritas* with the main stakeholders.

16 Judges are bound to observe strict confidentiality regarding the deliberations of the Court. This was the main reason former Judge Gómez-Ferrer gave when declining to be interviewed. We thought it was a quite extreme interpretation of his confidentiality duties, particularly when more than 30 years had passed, but we respected it. It might be important to mention that the confidentiality applies also to law clerks (Art. 86 of the by-law of the Court makes it an ex-

tremely serious offence for the clerks »to breach the duty of secrecy« and a serious offence »to breach the duty of discretion and guardedness«). This explains that in Spain there exist no »inner accounts« of the Court, contrary to what happens for instance in the US, where former clerks have published books or articles on their experience (see LAZARUS (1998); O'BRIEN (1986)), where clerks in general are the object of books (PEPPERS/WARD (2012)), and where prestigious journalists have published books about the interior of the Court, see WOODWARD/ARMSTRONG (1979); TOOBIN (2007).

to make a documentary that would attract tabloid headlines. But even so we absolutely wanted to create an atmosphere of confidence. For that purpose, we worked hard on the questionnaires, which combined questions about the personal background and recollections of the judges with questions regarding constitutional matters.

Most importantly, we told the interviewees that they could refuse to answer some of the specific questions we submitted to them – even when the warning was probably irrelevant, for it was evident that they had the right to do so. We also told them that, after filming, we would send them the footage and a transcript, in case they wanted to withdraw any recorded content. After filming no one objected to any question nor wanted to eliminate any footage.<sup>17</sup> In any case, the fact that we had carefully chosen the questions and that they were submitted to all the prospective interviewees a week in advance of filming made it possible for them to later be published as a coherent and meaningful book.

Before and during the filming of the interviews we also did some archival research. We thought it was important to situate the Court in its context, from a historical point of view. Therefore, we consulted the archives of the three main newspapers of that time (*El País*, *ABC* and *La Vanguardia*), where we found valuable documents to use in the documentary. We also visited the *Archivo General de la Administración* (General Archive of the Administration), but we found practically nothing relevant. For instance, we tried to find the records – if they existed – on the negotiation process to appoint the first judges, but all attempts were in vain.<sup>18</sup> At the time of filming the interviews (2012 and part of 2013) there was no general law for

consulting public archives, and the specific norm which might allow it (an article in the Administrative Procedure Law) was insufficient for that purpose.<sup>19</sup>

Obtaining images and audiovisual material was crucial for us. A documentary that only showed people speaking, with perhaps some newspaper front pages or articles, would be too boring even for a specialized audience, such as lawyers. So we tried to obtain video footage from the archive of *Radiotelevisión Española*, hereinafter RTVE, the public broadcasting corporation. As it was the only TV channel that existed in 1980, we supposed it would contain a lot of video recordings of the establishment of the Court in July 1980. The access to the archives for research purposes is relatively easy, and we had the opportunity to actually watch some very important historical material. The problem was that using it for a documentary was expensive because it was recorded in the old format (magnetic tape), and digitalizing it cost more than we could afford. Besides, the footage also featured the King, and the RTVE official told us that it was likely that before authorizing the use of such audiovisual content they would have to ask the Royal Household (Casa Real) for permission. Still, there was another possibility of incorporating the video recordings in the documentary. If the project was assessed by RTVE, and considered sufficiently appealing, it would co-produce the documentary and allow us to use the recordings for free. Unfortunately, after examining the memo and checking a few samples of the questionnaires, RTVE told us they were not interested. As a result, we could not use any of the material we had seen for the documentary, which clearly diminished the value and quality of the final product.<sup>20</sup>

17 This undoubtedly generated trust with the interviewees (most of them did not know us personally) and made the interviews easier and smoother. However, it also raised in us some doubts about the tone of the questions and of the interviews: we might have been too «soft», or too friendly, or not critical enough; and this might explain, as we will mention later, that practically none of the interviews contained criticisms vis-à-vis the Court.

18 This material was in the personal archives of Mr. Juan Antonio Ortega, and he allowed us to take some brief

shots of the documents (but not to scan them).

19 In December 2013 a law regarding transparency and access to public files was passed (*Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno*), but its provisions did not enter into force until December 2014, and therefore we could not use it for getting the information and documents we needed.

20 Years later we noticed that one of these main materials had been made public in the RTVE's website: it was a program, broadcasted in 1984 under

the title «Dentro de un orden», in which the President of the Constitutional Court Manuel García-Pelayo and its Vicepresident Jerónimo Arozamena were interviewed, and Mr. Ignacio de Otto, who at that time was serving as a Law clerk at the Court, explained with some detail what was the Court and how it worked. See: *Dentro de un orden – Tribunal Constitucional* (1984).

Regarding photographs, the process was easier and more successful. We consulted the archive of *ABC* (a very prominent newspaper) and bought some interesting pictures. We also asked to consult the archive of the Constitutional Court, which we thought would contain lots of material. We were allowed to make copies and to use – for free – more than 120 pictures. Some of the interviewees were so kind to give us pictures, and at the end of the day we were quite satisfied regarding the pictures (but not regarding RTVE's audiovisual material, whose absence was very frustrating).

Filming the 14 interviews took from March 2012 to June 2013. The next step was the transcription of all the interviews, which took longer than expected. This was partly due to the fact that the transcription was done by the communication staff of the *Colegio*, who had to do it at the same time as their normal workload, and also because some of the interviews were quite long. The length was due to the interviewees elaborating extensively in their answers,<sup>21</sup> and also because practically no one removed any of the questions. So we had recorded around nine hours of raw footage, which the *Colegio* took some time to transcribe. We also kept on trying to collaborate with RTVE and visited some other archives, such as that of the *Consejo General del Poder Judicial* (the committee in charge of the judiciary). By the end of 2013 everything was transcribed and we could start putting the pieces together. We had tentatively structured the script in six parts and arranged the pieces around them.<sup>22</sup> This was by far the most complicated, time consuming aspect of the process. We should also mention that in October 2013 the *Colegio* held elections, in which the person – President Candau – and the Council that had supported the project were defeated. The complete Council changed, and we had to present the ongoing project to the new President, Mr. Gonzalo Aguilera, and his team. As mentioned, they fully supported the continuation of the documentary.

In the spring of 2014 we were ready to start the editing process. After a few drafts, and after one of us had composed and recorded the music, by the end of 2014 we completed a first version we could show to the producer. The *Colegio* gave its OK, and the documentary was ready to be shown.

#### IV. The Premiere (2015) and Dissemination as a Book (2017)

Initially the *Colegio* did not have a clear idea of what to do with the documentary. This was partly due to the fact that the project had been conceived and initiated under a different Council, partly to the fact that publishing audiovisual materials is not the main activity of the *Colegio* – it was the first time it had done so – and partly because the format on which the documentary would be published (DVD) was rapidly becoming obsolete, and the *Colegio* was reluctant to launch it online (via Youtube).

Given all this, the *Colegio* decided not to take any decision regarding the publication of the documentary, or its dissemination, before gauging the opinion of some scholars, judges, journalists, etc. So for that purpose the Council decided to organize some previews in order to get some feedback. The *Colegio* turned to the *Centro de Estudios Políticos y Constitucionales* (CEPC), an official body for research and publishing, with whom the *Colegio* had a collaboration agreement. The CEPC agreed to schedule a premiere on July 2015, to which it invited two of the protagonists of the documentary (Mr. Rubio Llorente and Mr. Ortega Díaz-Ambrona), moderated by a long-tradition journalist, Mrs. Pilar Cernuda. Some of the current Constitutional Court judges attended, as well as other relevant scholars and some politicians.

Apparently, the preview/premiere was a success; at least we received very positive comments, and the President and other members of the

21 Mr. Bon's answers consisted of a twelve-page written essay, which he gave us after the interview.

22 The parts were: 1: Conceiving the Court; 2: Establishing the Court and appointing the Judges; 3: The kick-start of the Court and the election of the President; 4: The Court at work; 5: Constitutional matters; 6: A Court for the Constitution.

*Colegio* (particularly Mr. Juan María Díaz Fraile, the person in charge of the research department) told us so. So the *Colegio* agreed to organize some more screenings, and also authorized us to do it on its behalf. Between July 2015 and July 2016 ten screenings took place, hosted mainly by universities, and at all of them one or two relevant personalities or public figures were invited to the colloquium scheduled afterwards.<sup>23</sup> As a result, hundreds of scholars, students and perhaps journalists or political analysts had the chance to watch the documentary, and many others found out about it (by word of mouth and through social networks, because many of the universities that hosted the screenings posted a brief news item or some pictures). Many of them started asking us, and the *Colegio*, where could they purchase it or watch it.

This series of events and successful screenings persuaded the *Colegio* that it was worthwhile to publish or disseminate the documentary. In late 2016 Mr. Aguilera told us that the Council had decided to publish the documentary not just in an audiovisual format, but also as a book that would include the documentary. This was a possibility that we had in mind from the beginning and one we had briefly discussed with President Candau, but we were aware that it would increase the final budget of the project significantly. In any case, it was merely hypothetical, and Mr. Candau was no longer President when the documentary was edited and shown. The publication of the project in a printed format was exhilarating news for us. First, because it gave a solution to a certain deadlock regarding how the documentary would be disseminated. Second, because it gave us the chance to show the complete versions of the interviews – as we said before, the documentary contained only a small part of the footage, equivalent to approximately 10% of the total. And third, because a print

edition (rather than an online launch) gave us, and the *Colegio*, the possibility of adding more pictures or even a foreword.

It had taken approximately one year and a half to transcribe and edit the interviews, to select and buy new photographs, to complete the archival research, to keep on negotiating with RTVE on the use of the historic videos, to decide the format of the documentary attached to the book (DVD or memory card), to send the proofs to all the interviewees in case they wanted to correct or add anything, and to edit a final version of the documentary. The *Colegio* wanted to publish the book in a luxury format, which was expensive (the budget was also increased by the cost of the memory cards containing the documentary). Therefore it was not clear whether there would be a market for such an expensive book. Probably for that reason, the *Colegio* decided not to publish it as a normal, commercial book but as a non-commercial or complimentary book.

In the summer of 2017 the book was almost ready to be published. The *Colegio* asked the Constitutional Court if they would host a screening of the documentary, which took place not as an official event but on the occasion of the summer break drinks reception, in July 2017.<sup>24</sup> Perhaps for this reason, the *Colegio* turned again to the Court and asked if it would be willing to host a more formal presentation of the book, which by September 2017 had already been published.<sup>25</sup> The problem was that at that time the Court was very busy with the appeals regarding the Catalan secession, and apparently could not or did not want to organize a formal presentation. And there was another issue: the *Colegio* was holding elections in December 2017, and therefore some daily business was halted.

Although the book had already been published, only few people could actually read it because it

23 Apart from the premiere in the CEPC, these were the other screenings which took place in what we could consider the first stage of the dissemination of the documentary: UIMP, Magdalena Palace, Santander (July 2015); University of Valencia (September 2015); University of Granada (October 2015); in the XXIst meeting of the Association of clerks of the Constitutional Court (*Asocia-*

*ción de Letrados del Tribunal Constitucional* – Cuenca, November 2015); University of Córdoba (November 2015); University of Málaga (January 2016); University of Valladolid – Campus of Segovia (March 2016); Chaminade College, Madrid (April 2016); University of Castilla-La Mancha, in Toledo (April 2016); Royal College of Spain (*Real Colegio de España*) in Bologna, Italy, in May 2016.

24 At least two of the judges (Mr. Xiol – one the protagonists of the documentary – and Mrs. Roca) had already participated in some of the previous screenings.

25 BELTRÁN DE FELIPE, SARMIENTO (2017).

was a non-commercial edition and because its presentation, which the *Colegio* wanted to take place in the Constitutional Court, had been delayed. In addition, there was another change in the *Colegio*: Mr. Aguilera lost the elections to Mrs. María Emilia Adán (the first female President of the *Colegio*). So again a new Council would need to deal with a project which had been supported and launched by the previous Council. Luckily enough, Mrs. Adán, and many members of the newly elected Council, knew about the documentary and the book, and her attitude was completely favourable.<sup>26</sup> The presentation was agreed with the CEPC and it took place in April 2018.

By that time, other screenings had taken place,<sup>27</sup> and in February 2018 Mrs. Adán presented the book to King Philip VI, on the occasion of a Royal Audience to the newly appointed Land Registrars (*Registradores*).<sup>28</sup> We have to mention also a sad circumstance: by that time two of the documentary's protagonists had passed away.<sup>29</sup>

## V. The Impact of the Documentary

We think the documentary and the book represent a contribution, perhaps a small one, to the ongoing debate about the Spanish Transition. Indeed, for many<sup>30</sup> the Transition ended in December 1978, when the Constitution entered into force – and therefore the period covered by the documentary would not be included in the debate. Besides, this debate on the Transition is generally

a political one, sometimes bitter and partisan, while legal and even constitutional aspects are frequently disregarded. Nevertheless we believe the documentary can shed some light upon a not-too-well-known but important part of the Transition or the post-Transition: the Constitutional Court, whose protagonists had never before given their testimonies on film. It definitely possesses other valuable, more specific aspects, such as disclosing for the first time the lists of candidates exchanged between the government and the Socialist Party in order to appoint the judges, or some details described by Mr. Menéndez about his unsuccessful attempt to be elected President.<sup>31</sup>

In reality the documentary might possess other values, but this is not ours to expound or to decide.<sup>32</sup> Nevertheless, we think that its main contribution might be to start filling the lacuna of oral or audiovisual sources relating to contemporary constitutional law in Spain. By that we do not mean to say that the documentary is in itself »good«, or that its content deserves praise: we just want to highlight the fact that there was no other documentary or film about the Constitutional Court.<sup>33</sup> This undeniable value is even more important if we take into account that the documentary gathers the testimony of very relevant persons (Constitutional Court judges) who are no longer living, and therefore it is unique. We say this for the obvious, sad reason that there will be no further opportunity to interview Mr. Díez-Picazo, Mr. Rubio Llorente or Mr. Menéndez.<sup>34</sup>

26 The book had already been published and its costs paid, so not disseminating it would be an incomprehensible decision.

27 It was the second stage of the screening process: in the University of Alcalá (October 2016); in the University of Valladolid (February 2017); in the University of Alicante (June 2017).

28 See *Revista Registradores*, no. 82 (2018).

29 Mr. Díez-Picazo died in October 2015 and Mr. Rubio Llorente died in January 2016 (the screening of the documentary in the University of Granada, on 9 October 2015, was one of his last public appearances).

30 See *supra* n. 5.

31 There are other features which, from our point of view, make the docu-

mentary quite unique, such as the recording in the Plenary Hall, which as far as we know had never been done before.

32 Some people gave us negative or critical feedback: they had expected a complete, updated view of the Court, instead of an historical account limited to the »first Court«.

33 Except the TV program mentioned *supra* in n. 20.

34 Mr. Díez-Picazo died in 2015, two months after the premiere of the documentary; Mr. Rubio Llorente died in 2016, but he had the chance of presiding over a seminar in which the documentary was screened; Mr. Menéndez died in January 2018. Mrs. Begué, who declined to be interviewed, died in 2016, so the only

»first« judge still alive at the time of writing these pages is Mr. Rafael Gómez-Ferrer, born in 1937, who declined to be interviewed.

Apart from that, the documentary – and later the book – has had a considerable impact. As we mentioned before, the documentary was screened at universities and cultural institutions in Spain and also in Italy and Germany.<sup>35</sup> The *Colegio* gave its consent to some colleagues to use the documentary as teaching materials, so presumably

many law students in Spain have had the opportunity to watch it. The book has been reviewed several times, in Spanish law journals as well as abroad.<sup>36</sup> Since May 2019 the book has been available on Amazon. ■

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35 Before the publication and presentation of the book there were 14 official screenings hosted by universities or cultural institutions and approved by the *Colegio*, and since July 2018 there have been three more (University of La Coruña in November 2018; University of Cádiz in October 2019; University of Extremadura in October 2019). Two more were cancelled or postponed due to the COVID-19 pandemic in spring 2020.

36 See reviews by DUARTE MARTÍNEZ (2018); by AZPITARTE SÁNCHEZ (2018), by REQUEJO PAGÉS (2018). In December 2018, it was mentioned by Prof. JOSEPH WEILER on the *European Journal of International Law* blog as one of the ten best law books of 2018, see WEILER (2018).